

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re S. W. et al., Persons Coming Under the
Juvenile Court Law.

MADERA COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

KRISTINA W.,

Defendant and Appellant.

F051032

(Super. Ct. No. BJP015494 &
BJP015495)

MODIFICATION OF OPINION
UPON DENIAL OF REHEARING
[NO CHANGE IN JUDGMENT]

THE COURT:

Appellant has filed a petition for rehearing claiming that our opinion employs an incorrect standard in determining that California was the minors' "home state." Contrary to appellant's assertion, in our opinion we did not find that California was the home state. Our opinion rejected appellant's argument that Nebraska was the home state. Appellant's initial jurisdiction argument rested entirely on the assertion that Nebraska was the home state. Having rejected this argument, it was not necessary for us to discuss the matter further.

To avoid any confusion similar to that shown by appellant in the petition for rehearing, we deny the petition for rehearing and order that our opinion, filed March 28, 2007, and certified for partial publication, be modified as follows:

Line 25 on page 8 of the typewritten opinion begins a new paragraph. The material following this should instead continue from the previous paragraph.

Beginning on line 27 on page 8, insert the following:

Kristina argues that jurisdiction in California cannot be established under the other provisions of section 3421 because there is no evidence any Nebraska court ever declined jurisdiction over the mother or the minors. Because the facts demonstrate that Nebraska is not the home state of Kristina and her children, the provisions regarding when a home state has declined to exercise jurisdiction have no application.

Although Nebraska is not Kristina's home state, California also does not meet the definition of home state as defined in section 3402, subdivision (g) because the evidence does not demonstrate that Kristina and her children resided in California for six consecutive months. When there is no state that meets the definition of home state, jurisdiction may be established under section 3421, subdivision (a)(2).

A court of this state has jurisdiction to make a child custody determination when: "(a)(2) A court of another state does not have jurisdiction under paragraph (1), or a court of the home state of the child has declined to exercise jurisdiction on the grounds that this state is the more appropriate forum under Section 3427 or 3428, and both of the following are true:

"(A) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence.

"(B) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships." (§ 3421.)

Kristina and her children have a significant connection to this state other than mere physical presence because they were residing in this state at the time the proceedings were commenced. In addition, there is substantial evidence in this state concerning the children's care, protection, training, and personal relationships. Sam's mother let the children eat, sleep, and bathe in her house. She provided them with food and clothes. At the time the children were detained they were in the house with Sam's mother. In addition, local child welfare workers and local police observed the living conditions in the van, which served as the home for Kristina, Sam and her children. Kristina had been in a relationship with Sam for several years. The children were young at the time of their detention and their closest personal relationship was with their mother, who resided in California. The children were not in school at the time of their detention.

Subject matter jurisdiction existed in California under section 3421, subdivision (a)(2) at the time this action was commenced. Because jurisdiction was properly established under section 3421, we need not discuss whether California would have had continuing subject matter jurisdiction under the emergency provision of section 3424, subdivision (b).

Appellant's petition for rehearing is denied.

This modification does not change the judgment.

VARTABEDIAN, Acting P. J.

WE CONCUR:

CORNELL, J.

GOMES, J.